

353.466 Persons to be joined as defendants -- Verified petition showing effort to locate owners -- Advertisement and lis pendens notice, contents -- Trustee ad litem.

- (1) The person seeking to impress a trust upon a severed mineral interest for the purpose of leasing and developing same shall join as defendants to the action all those persons having record title thereto who are unknown or missing and the unknown heirs, successors and assigns of all such persons. The persons named as defendants and who are the unknown or missing owners as defined herein, shall stand for and represent the full title and the whole interest of the unknown or missing owners in the severed mineral interest or estate or interest therein. All parties not in being who might have some contingent or future interest therein, and all persons whether in being or not in being, having any interest, present, future or contingent, in the severed mineral interests sought to be leased, shall be fully bound by the proceedings hereunder.
- (2) There shall be filed a verified petition specifically setting forth the efforts to locate and identify the unknown or missing owners of the interests to be leased and such other information known to the petitioner which might be helpful in identifying or locating the present owners thereof. There shall be attached to the petition as an exhibit thereto a certified copy of the instrument creating the original severance and such additional instruments as are necessary to show the vesting of title to the minerals in the last record owner thereof. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to identify and locate the present owners of said interests.
- (3) Service of process shall be as provided by the Kentucky Rules of Civil Procedure and there shall be filed a lis pendens notice in the county clerk's office of the county wherein the mineral estate or the larger portion thereof lies. Immediately upon the filing of the petition, the petitioner shall advertise as provided in KRS Chapter 424. Both the advertisement and the lis pendens notice shall contain the names of all of the parties and their last known addresses, the date and recording data of the original deed or other conveyance which created the mineral severance, an adequate description of the land as contained therein, the source of title of the last known owners of the severed mineral interests and a statement that the action is brought for the purpose of impressing a trust authorizing the execution and delivery of a valid and present mineral lease for development of the particular minerals described in the petition. The court, in its discretion, may order advertisement elsewhere or by additional means if there is reason to believe that additional advertisement might result in identifying and locating the unknown or missing owners.
- (4) The court shall appoint a trustee ad litem, who shall be a licensed, practicing attorney, to represent the unknown or missing owners and their unknown heirs, successors and assigns. The trustee ad litem shall review the petition and file an answer and such other pleadings as are necessary and proper to represent fairly the interest of the unknown or missing owners. It shall be the duty of the trustee ad litem to make an independent inquiry and search for the purpose of identifying and locating the unknown or missing owners and he shall report to the court the results

of the investigation. The court shall allow the trustee ad litem a reasonable fee for his services to be taxed as costs.

Effective: July 15, 1982

History: Created 1982 Ky. Acts ch. 165, sec. 4, effective July 15, 1982.